



U.S. Department of Justice

Civil Rights Division

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Office of the Assistant Attorney General

Washington, D.C. 20035

February 18, 1997

The Honorable Antonio O. Garza, Jr.  
Secretary of State  
State of Texas  
Elections Division  
P.O. Box 12060  
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to your request that the Attorney General reconsider and withdraw the January 16, 1996, objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to Chapter 797 (1995), insofar as it authorizes agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in agency files as part of the implementation of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg to 1973gg-10, for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your request on December 19, 1996; supplemental information was received on January 22, 1997.

This also refers to the administrative rule promulgated by the Texas Secretary of State at 1 Tex. Admin. Code, Section 81.402, which authorizes employees of agencies where clients are required to update citizenship status at each renewal of service, change of address, or other contact with the agency to make determinations of an individual's eligibility to register, as part of the implementation of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg to 1973gg-10, for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on December 19, 1996; supplemental information was received on January 22, 1997.

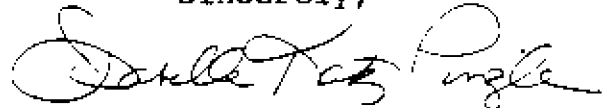
With regard to the proposed administrative rule, we understand based on the supplemental information your office provided on January 22, 1997, which was confirmed in a telephone conversation on February 14, 1997, between Ms. Colleen Kane-Dabu of our staff and Mr. Clark Kent Ervin of your office, that the administrative rule has not been finally adopted and that the earliest date that it can become final is February 21, 1997. A proposed change which is not finally enacted or capable of administration is not ripe for review by the Attorney General (with certain limited exceptions not applicable here). Accordingly, it would be inappropriate for the Attorney General to make a determination concerning your submission now. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.22(a) and 51.35). When this change is formally adopted, preclearance under Section 5 should be sought.

With regard to your request that the Attorney General reconsider the January 16, 1996, objection, the state has provided no new relevant information or legal argument in support of its request; as noted above, the proposed administrative rule, which appears to form the basis for the state's request, is not final and cannot be considered under Section 5 at this time. See 28 C.F.R. 51.45. Therefore, I remain unable to conclude, as I must under the Voting Rights Act, that the State of Texas has carried its burden of showing that the submitted change will not have a discriminatory effect. See Beer v. United States, 425 U.S. 130, 141 (1976); Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.48 and 51.52. Accordingly, on behalf of the Attorney General, I must decline to withdraw the objection to Chapter 797 (1995), insofar as it authorizes agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in agency files.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that Chapter 797, insofar as it authorizes agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in the agency's file, has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning these matters. If you have any questions, you should call Colleen Kane-Dabu (213-894-2931) of our staff. Refer to File Nos. 95-2017 and 96-4548 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

A handwritten signature in cursive script, reading "Isabelle Katz Pinzler".

Isabelle Katz Pinzler  
Acting Assistant Attorney General  
Civil Rights Division